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A CONSTRUCTIVE DEPARTMENT OF JUSTICE—II

THE NEW HAVEN RAILWAY SETTLEMENT

Most of New England's 6,500,000 people live below the northern line of Massachusetts. In density of population Rhode Island stands first in the Union; Massachusetts, second; and Connecticut, fourth. New England's hundreds of cities, towns, and villages are manufacturing centers and its rural population is small.

Its long coast-lines furnishes an unusual number of good seaports. Boston is the fifth largest city in North America, and stands second to New York in volume of imports and sixth in volume of exports, the two combined amounting in volume in 1912 to over \$198,000,000.

New England produces no coal, pig-iron, or cotton, and little wool. Most of its raw material is brought in by rail or water, and the greater portion of its manufactured articles reach other parts of the United States and foreign countries in the same way. Its manufactured products approximate in value \$3,000,000,000 annually (in 1909, \$2,670,066,000).

During the year ending June 30, 1910 (the latest year with available official returns), the New England steam roads had about 8,230 miles of main line, with gross receipts from freight and passenger traffic of about \$130,000,000. Notwithstanding the fact that over one-half the territory involved was thinly settled, with scant railroad mileage, they carried 2,463 passengers and 1,203 tons of freight for every square mile of New England territory, while 327 passengers and 623 tons of freight were the average in the United States.

Not only is the prosperity of this region largely dependent upon transportation facilities, but, as its manufactured articles reach practically every town and village in

the Union, its transportation problems affect a large portion of the markets and citizens of the country. Most of New England's freight and passenger traffic is with points to the south and west, and moves over various routes by land and water, some extending southwesterly from New England, some northwesterly, and some westerly. The New England shipper can reach practically any of these points over any of these routes.

The conditions described have prevailed since 1892, except that the railroad mileage has increased slightly and the traffic considerably.

The era of railroad construction found commerce moving almost exclusively by water to coastwise and river points, whence it was distributed, by slow and expensive methods, to a limited territory. New York City had the advantage of a central location on the Atlantic seaboard, with proximity to canal and river navigation, and had already outstripped most of its commercial rivals. Having no navigable streams of consequence, New England relied upon its seaports. It was a land of shipbuilders and seamen, a manufacturing center, and its fine harbors and great fleets of merchant vessels enabled it to hold its own commercially.

During several years succeeding 1832, short lines of railroad were constructed from various New England ports to the interior in a western or northern direction. These, had no western connections, and for many years all commerce still passed through the Atlantic and Sound ports, Boston getting the largest share as the terminus of a number of these short lines.

What is now the Boston & Albany Railroad was extended west to Albany about 1842. Between 1844 and 1849 the original line of the New York & New Haven Railroad Company was built from New York City to New Haven, with connections with various short lines to the interior of New England. These lines furnished the first railroad connections with New England.

Meanwhile New York City had secured several canal and railroad connections with the South and rapidly developing West, and within a short period of time these were extended and a number of new lines added. As railroad transportation was perfected, quicker service to interior points by rail began to supplant boat traffic. A large portion of this commerce then moved from these ports, and by the newly

constructed New York & New Haven line, to New York City, to and from which it passed over New York connections to the south and west. By virtue of this condition New England shipowners suffered and New York City became the sole gateway for much of New England's commerce, giving the manufacturers and merchants of that city substantial advantages over those of New England in the matter of lower rates on raw material and manufactured articles.

To meet this condition the people of New England, about 1852, began seeking new connections with the South and West. By building or extending several rail lines to connections west of the Hudson River one new gateway was developed, another was secured by lines running in a northwesterly direction to connections at or near the Canadian border, while another resulted from the operation of steamboat lines from New England ports to Philadelphia, Baltimore, and Norfolk, where connections were made with rail lines extending south and west.

By 1892 ten railroad systems, exclusive of the Canadian Pacific Railway Company and the Bangor & Aroostook Railway Company, both in Maine, had developed by having absorbed most of the smaller lines by purchase, lease, or stock control. The two lines excepted have never competed in any substantial way with the ten systems and the New England boat lines.

The ten systems controlled about 6,500 miles of main line in New England, with freight and passenger earnings of about \$78,000,000, the total mileage of New England being about 7,100, with freight and passenger earnings of about \$80,000,000. Of the 600 miles not embraced within the ten systems, the Canadian Pacific and Bangor & Aroostook controlled about 500, and the remaining 100 were mostly industrial and narrow gauge and constituted feeders of the ten systems.

At that time the water traffic of New England (exclusive of boats running to and from Europe, local boat lines, tramp steamers, and bulk cargo carried in barges) was carried by twenty-one boat lines operated by eighteen companies. There were a few trolley lines engaged in passenger traffic.

Nine of these railroad systems were independent, and the tenth controlled by one of the others. Sixteen of the twenty-one boat lines were independent, and five controlled

by three of the railroad systems. The trolley lines were independent and were beginning to compete in a small way.

Some of the boat lines transported passengers, some freight, and some both. The nine independent railroad systems were competitors of one another and of most of the boat lines, and most of the boat lines were competitors of one another and of the railroad systems. All of the ten railroad systems had southern and western connections, some at New York City, some at the Hudson River, and some at or near the Canadian border. Fourteen of the twenty-one boat lines had similar connections at New York City, Philadelphia, or Southern ports.

The New Haven Company was one of the ten railroad systems, and controlled two of the boat lines, and the only rail line from New England to New York City. It owned no trolley lines. It controlled about 850 miles of main line, mostly in the southern half of New England, and had annual freight and passenger receipts of about \$16,000,000. It did not reach Boston, but formed parts of several through routes between New York City and Boston.

No new railroad systems have been built in New England since 1892. About 630 miles have been added to the ten systems, and about 470 to the Canadian Pacific, Bangor & Aroostook, and the short lines referred to.

Nine new boat lines have been established, several abandoned, and some consolidated. The trolley mileage has been greatly increased, especially in southern New England, and these lines have become substantial competitors of the railroads.

NEW HAVEN ACQUISITION

By 1913 the New Haven Company (by purchase, lease, stock ownership, contract, or partnership agreement) had acquired substantial control of nine of the ten railroad systems. It had repeatedly attempted to purchase the tenth, and, failing therein, had reduced it to a weak competitor. This control applied to about 6,500 miles of main line, with annual passenger and freight earnings of about \$120,000,000, out of a total of about 8,200 miles of such lines in New England, having gross passenger and freight earnings of about \$130,000,000 per annum. Of the remaining 1,700 miles, having gross earnings of about \$10,000,000 per annum, about 400 miles, owned by the Central Vermont Railroad Company and controlled by the Grand Trunk Railway

Company of Canada, substantially competed with the New Haven. The lines controlled by the New Haven Company earned about ninety per cent. of the gross freight revenue, and about ninety-five per cent. of the gross passenger revenue of all New England railroads. The New Haven Company had acquired control of, or the largest interest in, all of the existing boat lines except six, one of the six being controlled by the Central Vermont Railroad Company, three being weak and unimportant Sound lines, and two operating from Boston to Savannah and Charleston, respectively. This control applied to about eighty-five per cent. of water traffic (as above defined). The New Haven Company had acquired control of about 1,200 miles of the trolley lines in New England, including all in Rhode Island except about forty miles, all in Connecticut except about one hundred, substantially all in Central and Western Massachusetts, and practically all extending from New York City and vicinity into New England. These trolley roads crossed State lines at many points, paralleled lines of the New Haven Company for hundreds of miles, and some of them constituted through routes from the suburbs of New York City to within some fifteen miles of Boston.

FINANCIAL RESULTS OF MONOPOLY

The history of the New Haven presents no exception to the rule that monopolies in time fall of their own weight and decadence. This is illustrated by a comparison of the financial status of the properties involved in 1892 and now.

In 1892 the condition of the New Haven was first-class in every respect. The stock sold readily in the neighborhood of \$180 per share, its dividends for years had been substantial and regularly paid, and its securities were regarded as gilt-edge in every respect. In 1913 it quit paying dividends, has a large floating debt, and its stock has recently been quoted below \$70 per share. During the period in question its investment in its railroad property increased \$165,000,000, while its campaign of general acquisition of transportation facilities and other properties increased its direct liability by \$495,000,000, not including an assumed contingent liability of \$82,000,000.

In 1892 the Boston & Maine Railroad (the largest of the systems controlled by the New Haven) was prosperous and its stock was quoted around \$190 per share. After its con-

trol was acquired by the New Haven it ceased paying dividends after an unbroken record of sixty-four years, and its stock has been quoted on the market below \$40 per share.

In 1892 the original steamboat companies were generally prosperous, some paying dividends as high as twenty per cent., and the stock of some was quoted at almost fabulous figures. To-day none of those acquired by the New Haven are paying dividends, and the stock of the Merchants & Miners and that of the Eastern Steamship Corporation are not quoted on the market.

The Massachusetts and New York trolley lines are paying no dividends, the Rhode Island trolleys paid a dividend of about two and three-fourths per cent. last year, while the Connecticut trolleys paid about four per cent.

Complaint of service on the steam lines has been general and insistent, and in 1912 the Interstate Commerce Commission, of its own motion, undertook an inquiry into conditions, resulting in findings too familiar to need quotation.

The above results are not the product of Government interference, but resulted largely from non-interference.

POWERS OF THE FEDERAL GOVERNMENT AND THEIR EXERCISE

The Sherman Act prohibits restraint, or monopolization, of interstate commerce, and the Department of Justice has no power under its terms to interfere with what might be termed the domestic organization of a railroad. For instance, it has no power under this act to dictate the officers of a road, or to determine its rates, or the trains it shall operate, or its schedules, or the character of service it shall render its patrons, or to enforce a liability of officers or directors to stockholders. The Interstate Commerce Commission and the various State commissions have jurisdiction over rates, equipment, finances, and other matters not covered by the terms of the Sherman Act, and whatever relief along those lines can be given by the Federal Government is through the machinery furnished by the Commission.

May 22, 1908, Attorney-General Bonaparte, at the direction of President Roosevelt, caused a bill in equity to be filed against the New Haven Company, charging a combination in restraint of trade in the holding by the New Haven Company of control of the Boston & Maine Railroad, and trolley lines in Massachusetts, Rhode Island, and Connecticut, and praying that the New Haven Company be re-

quired to relinquish such control; this did not include the steamboat lines on Long Island Sound, or the Merchants & Miners Transportation Company, in both of which the New Haven Company had then acquired its interest.

June 26, 1909, Attorney-General Wickersham caused the Government's suit to be dismissed.

After the dismissal of this suit the New Haven Company entered into a contract with the New York Central & Hudson River Railroad Company to share equally the financial results of the operation of the Boston & Albany Railroad (which is leased for ninety-nine years to the New York Central & Hudson River Railroad Company). The New Haven Company also acquired a large minority interest (some forty-six per cent.) in the Eastern Steamship Corporation, which owned practically all the New England coastwise steamboat lines aside from those already controlled by the New Haven Company. It also acquired a few more trolley lines in Rhode Island, Connecticut, and New York.

Soon after assuming office in the spring of 1913, Attorney-General McReynolds determined upon a complete investigation *de novo* of the status of the New Haven Company in relation to the Sherman Law. As a result of that investigation the Government concluded that the New York, New Haven & Hartford Railroad Company had suppressed competition in various ways during the last twenty years, and had established a practical monopoly in railroad, steamboat, and trolley transportation in a considerable portion of that territory. The Attorney-General decided to institute a suit in equity to dissolve the monopoly, and a bill praying for such dissolution was prepared. In the fall of 1913, while this bill was being prepared, the new management of the New Haven Company opened negotiations with the Department of Justice with a view to ascertaining on what terms the latter would be willing to settle the contemplated suit.

The New Haven system is a consolidation of some two hundred corporations of different kinds, most of them having owned or operated railroads, trolley or steamboat lines, and the process of absorption has been going on during a period of more than thirty years. Many of these corporations have been kept alive, some are holding companies for the New Haven, the property of many is leased to the New Haven, and others are controlled through ownership of the

majority of their stock by the New Haven or its subsidiaries.

It was utterly impracticable to reduce the New Haven Railroad system to its original elements, or to attempt to do anything even approximating this, as the result would have been disastrous industrially and financially, and would have introduced chaos into the transportation problem involved.

The Attorney-General indicated to the representatives of the road the outlines of an arrangement which he concluded would result in restoring a fair and reasonable condition of competition within the territory affected.

On January 10th the representatives of the railroad expressed a willingness to recommend to its directors and stockholders an acceptance of the requirements indicated as soon as the details could be worked out.

By March 21st the solution of this transportation problem, the most complicated which has yet arisen under the Sherman Act, had progressed so far as to justify the announcement by those conducting the negotiations that the general terms of the adjustment had been determined, subject to ratification by the stockholders of the New Haven Company, as follows:

(1) The New Haven Company to at once cancel its partnership agreement with the New York Central & Hudson River Railroad Company for the operation of the Boston & Albany Railroad system, and to restore that system to the exclusive control of the New York Central.

(2) The stocks of the subsidiary companies of the New Haven which control the Connecticut and Rhode Island trolleys to be placed in the hands of trustees—five for each State—and sold within five years from July 1, 1914.

(3) The majority stock of the Merchants & Miners Transportation Company, held by the New Haven Railroad, to be placed in the hands of three trustees and sold within three years from July 1, 1914.

(4) The minority stock in the Eastern Steamship Corporation, now held by the New Haven Railroad, to be sold within three years from July 1, 1914, and in the meanwhile deprived of voting power.

(5) The Berkshire (Massachusetts) trolleys and the New York trolley lines between New York City and Connecticut, to be sold within five years from July 1, 1914.

(6) The Boston Railroad Holding Company is a Massa-

chusetts corporation holding a majority of the stock of the Boston & Maine Railroad, and ninety per cent. of the former's stock, in turn, is owned by the New Haven Railroad. The charter of the Holding Company prohibits it from disposing of the Boston & Maine stock without the consent of Massachusetts. The New Haven to secure from the Legislature of Massachusetts legislation removing this prohibition, and, when this is done, the stock of the Holding Company to be transferred at once to five trustees, and, after arrangements have been made to protect the minority stock of the Holding Company, these trustees to sell the Boston & Maine stock prior to January 1, 1917.

(7) Whether the New Haven Railroad shall be permitted to retain the Sound boat lines to be submitted to the Interstate Commerce Commission for determination under the provisions of the Panama Canal Act.

(8) A decree embodying the foregoing to be entered in the United States District Court for the Southern District of New York. The decree to further provide that upon application of the New Haven Railroad, or the trustees, and for good cause shown, the time within which any of the above-mentioned stocks shall be sold may be extended by the court.

(9) Messrs. Frank P. Carpenter of Manchester, N. H., Henry B. Day of Boston, Mass., James L. Doherty of Springfield, Mass., Charles P. Hall of Boston, Mass., and Judge Marcus P. Knowlton of Springfield, Mass., to be trustees for the Boston & Maine stock. Messrs. Lyman B. Brainerd of Hartford, Conn., Charles Cheney of South Manchester, Conn., George E. Hill of Bridgeport, Conn., William W. Hyde of Hartford, Conn., and Judge Walter C. Noyes of New London, Conn., to be trustees of the Connecticut trolleys. Messrs. John O. Ames, John P. Farnsworth, Rathbone Gardner, Theodore Francis Green, and Charles C. Mumford, of Providence, R. I., to be trustees of the Rhode Island trolleys. All these trustees are men of high character and ability.

On April 21st at a stockholders' meeting of the New Haven Company, approximately 1,000,000 shares were voted in favor of the adjustment offered and 700 against it.

The Legislature of Massachusetts is now considering the Governor's message recommending the enabling legislation permitting the New Haven Company to part with its con-

trol of the Boston & Maine system, and it is assumed that the necessary power will be given and the contemplated decree entered within the next few weeks.

GENERAL EFFECT

The following results have accrued, or will accrue, from the proposed arrangement:

(1) The New Haven Company has already canceled its partnership arrangement with the New York Central for the operation of the Boston & Albany system, extending in a westerly direction from Boston through central Massachusetts to the Hudson River, the competitive independence of this system (about 400 miles) being restored.

(2) The stock of each of the trolley systems of Connecticut and Rhode Island will be placed in the hands of five trustees. It will be the duty of each body of trustees to control the operations of the trolley system in its hands and maintain it independent of the New Haven Company, and with due regard for the public interest, until the stock in question has been disposed of.

A decree is to be rendered by the United States District Court for the Southern District of New York carrying out the terms of the arrangement, and the five trustees will become parties to the suit and officers of the court to carry out the proposed adjustment. Machinery will be provided by the court preventing the stock from being offered to the stockholders of the New Haven Company as a class, either in proportion to their stockholdings or otherwise, or being sold to the New Haven Company, or to any person or corporation to be held in its interest directly or indirectly, or to re-establish in any manner the combination and control which it is the purpose of the arrangement to terminate.

(3) The Merchants & Miners Transportation Company operates two lines of steamers out of Boston and two out of Providence, reaching Philadelphia, Newport News, Norfolk, and Baltimore, and the New Haven Railroad Company owned about fifty-two per cent. of the stock of this transportation company. This stock has already been sold to independent owners with the above-mentioned safeguards against its continued control by the New Haven Company, or any person or corporation acting directly or indirectly in its interests, and the steamship lines in question have already become competitors of the New Haven Company.

(4) The Eastern Steamship Corporation operates lines of steamers from Boston to New York and various New England ports, and some forty-six per cent. of its stock is owned by the New Haven Railroad. This stock will be deprived of voting power at once, and sold within three years from July 1, 1914, with similar safeguards against control by the New Haven Company, as in the case of the Connecticut and Rhode Island trolleys.

(5) The Massachusetts and New York trolleys will be disposed of within five years from July 1, 1914, with similar safeguards against control by the New Haven Company.

(6) The Boston & Maine Railroad Company operates or controls a line running almost directly west from Boston to the Hudson River through northern Massachusetts, parallel with the Boston & Albany system, together with some mileage south of the line in question and some 1,800 miles north thereof. Under the agreement contemplated the majority of the stock in this road, now controlled by the New Haven, will be turned over at once to five trustees. It will be the duty of these trustees to at once assume control of this railroad, and maintain it independent of the New Haven, and with due regard for the public interest, until the stock in question has been disposed of. These trustees will become officers of the court, as in the case of those of the Connecticut and Rhode Island trolleys, and the same safeguards will be provided by the decree against control of the Boston & Maine Railroad by the New Haven. The effect of this part of the arrangement will be to restore at once competition with the New Haven Company over the entire mileage (some 3,200) now controlled by the Boston & Maine.

(7) The New Haven Railroad controls, through the ownership of the entire stock of the New England Steamship Company and the Hartford & New York Transportation Company, eight lines of steamers plying between New York and various Sound ports, and whether it shall be permitted to retain these lines will be determined by the Interstate Commerce Commission under the terms of the Panama Canal Act.

From the above it will be seen that the *immediate result* of the arrangement is the operation, independent of the New Haven Railroad, of the steam lines of the Boston & Albany and Boston & Maine systems and of the Connecticut and Rhode Island trolley lines; the independent handling

of the interest of the New Haven Railroad Company in the outside steamboat lines, with the final disposition of all the New Haven's interest in all these properties, as well as in its Massachusetts and New York trolleys, under orders of the court, within the time specified, and to persons other than the New Haven Railroad or persons or corporations controlled by it.

It is believed by the Government that the proposed arrangement is fair and reasonable, and will result in restoring a substantial condition of competition in transportation within the territory in question.

The contemplated adjustment will free from New Haven control steam roads having about 3,600 miles of main line out of about 6,500 miles now dominated by it. About 3,200 miles of this 3,600 belongs to the Boston & Maine system and constitutes three of the nine New England lines controlled by the New Haven, while the remaining 400 miles so freed constitutes another one of the said nine roads, being the Boston & Albany. The Boston & Maine and the Boston & Albany each constitute a distinct transportation unit, with rolling stock, operating force, and necessary equipment, and each can be operated as an independent unit and in competition with the New Haven. The Boston & Maine controls the Fitchburg Line, running directly west from Boston to the Hudson River, where it has its southern and western connections, and it likewise controls several lines extending from Central New England to the northwest, with connections at the Canadian border with the South and West. The Boston & Albany system extends in a westerly direction from Boston to the Hudson River, where it has its connections with the South and West, and all of the lines referred to will become competitors of the New Haven under independent managements, competing for traffic to and from the South and West with the rail lines of the New Haven running west to the Hudson River and southwest to New York City.

The Merchants & Miners Transportation Company and the Eastern Steamship Corporation are each transportation units, with all necessary operating force, boats, and terminals, connecting at various points with the Boston & Maine and Boston & Albany railroads, and, under independent managements, will furnish natural connections with those lines between New England points and between New Eng-

land and New York City, Philadelphia, Baltimore, and the South. As in former years, when the Boston & Maine, the Fitchburg, and the Boston & Albany were independent systems, these boat lines will make joint rates with the independent railroads provided for by the proposed arrangement, giving joint rail and water transportation from all Central and Northern New England to the South and West in competition with through rail lines between the same points.

The New England Steamship Company and the Hartford & New York Transportation Company are each transportation units, with all necessary operating force, boats, and terminals, and in case the Interstate Commerce Commission requires the New Haven to surrender the five Sound lines operated by the first and the three Sound lines operated by the second, and the New Haven Company sells the stock of these two steamboat companies, they will likewise furnish competing transportation agencies between the various Sound lines and New York City in competition with the New Haven rail lines, and will also become parts of joint rail and water routes between various interior New England points and New York City and beyond in competition with the New Haven rail lines.

The New York, Connecticut, Rhode Island, and Massachusetts trolley lines, connecting with one another and with the various Sound boat lines, will constitute transportation units, with all necessary operating force, equipment, and terminals, to enable them to compete with the steam lines of the New Haven, which they parallel for over 1,000 miles.

The New Haven Company will retain some 3,000 miles of main lines, mostly compact and fairly well improved and equipped, and reaching almost every town of any importance in Central and Southern New England. It will still have practically everything which made it a great and successful transportation system before the creation of the monopoly complained of was begun.

The Government has realized that the placing of the many millions of dollars of securities in question on the market at this time, or within a very short time, would likely result in disaster to the property involved and heavy losses to thousands of individuals not directly responsible for existing conditions, and it has given what seems to it to be a liberal time to work out the desired results.